IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1474 of 2004

Muthu Thevar .. Petitioner

vs.

1.State rep by
The Sub-Inspector of Police,
Paravakottai Police Station,
Mannargudi Taluk,
Tiruvarur District.

2.Ravichandran @ Ayyakutti .. Respondents

Prayer: This Revision petition has been preferred against judgment dated 16.6.2004 made in C.C.No.289 of 1997 on the file of the Judicial Magistrate No.II, Mannargudi.

For Appellant : Mr.S.Shanmugavelayuthan, Senior Counsel
for Mr.P.K.Rajagopalan.

For Respondents : Mr.V.R.Balasubramanian
Additional Public Prosecutor (for R1)

Mr.B.Pugalendhi (for R2)

ORDER

This revision has been preferred against the judgment in C.C.No.289 of 1997 on the file of the Judicial Magistrate No.II, Mannargudi, against the acquittal of A2, who was charged under Section 326 r/w 34 IPC. It is admitted fact that co-accused A1 died pending trial.

2.After taking cognizance of the case the learned Judicial Magistrate issued summons to the accused and on their appearance, furnished copies under Section 207 of Cr.P.C. When the charges were explained to the accused, they pleaded not guilty.

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3.Before the trial Court P.W.1 to P.W.11 were examined and Ex.P.1 to Ex.P.13 were exhibited and M.O.1 to M.O.3 were marked. After going through the oral and documentary evidence, the learned Judicial Magistrate has come to the conclusion that the charges levelled against A2 has not been proved beyond any reasonable doubt and accordingly, acquitted A2, which necessitated the complainant-P.W.1 to prefer this revision.

4.The learned Judicial Magistrate had acquitted the accused on two grounds. First being the motive spoken to by P.W.1 in his evidence and the motive according to the prosecution differs and the second one is that A1, the co-accused has also sustained injury in the same occurrence, but not explained by the prosecution. According to the evidence of the Investigating Officer-P.W.11, who would admit in the cross-examination that A1 had also preferred a counter complaint which was registered under Cr.No.33 of 1997. But both P.W.1 and P.w.2 have not spoken to anything about the injury sustained by A1 in the occurrence. The learned Judicial Magistrate, under such circumstances, has observed that since the prosecution has failed to file the FIR registered in the counter case on the basis of the complaint preferred by A1 and also the result of the investigation, it cannot be ascertained who is the aggressor for the offence.

5. The learned Senior counsel appearing for the revision petitioner would contend that since the injury sustained by A1 in the same occurrence was only trivial or superficial in nature, the Investigating Officer has proceed with the complaint preferred by P.W.1, which was registered under Cr.No.32 of 1997 and dropped the complaint preferred by A1. But to show that the injury sustained by A1 in the occurrence was simple and superficial in nature, there is no material produced on the side of the prosecution.

6.On the side of the accused D.W.1 to D.W.3 were examined and Ex.D.1 was marked. According to the accused, the land intended to be purchased by P.W.1 was purchased by A1 under Ex.D.1-sale deed is the motive for occurrence. This fact was spoken to by D.W.1 and D.W.2. But according to the prosecution, P.W.1 and A1 are adjacent land owners. The water from the land of A1 was allowed to go into the land of the complainant-P.W.1 and destroyed the hayrick stored in the land of P.W.1. when this was questioned by P.W.1, A1 had attacked him with spade and A2 attacked P.W.1 with a knife causing grievous injury. The learned Senior counsel would represent that according to P.W.8, the doctor, P.W.1 was admitted in the hospital on 31.1.1990 at about 8.00 am and that Ex.P.6 is the wound certificate issued by him. It is seen from the evidence of P.W.11-Investigating

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Officer that only on the evidence of P.W.8, the doctor, who had described the injury as grievous in Ex.P.6, he has charged A2 under Section 326 IPC. The injury No.2 to Ex.P.6 is a stab injury at the bottom of the stomach measuring 2 x 3 cms through which all the fat materials were protruding out. To describe an injury as a grievous it should come within the ambit of Section 320 IPC. An injury may be medically grievous but the prosecution must show that it is legally also grievous. Absolutely there is no material produced on the prosecution to show that the injury sustained by P.W.1 is legally grievous as defined under Section 320 IPC. This point has also been dealt with by the learned Judicial Magistrate at para 21 of his judgment.

7.The important point which looms larger against the case of the prosecution is that the non explanation of the injury sustained by A1 in the same occurrence. The learned Judicial Magistrate at para 32 to his judgment relying on a ratio of the Honourable Apex Court in 2002 SCC (Crl.) 1444(1), has held that the non-explanation of the injury sustained by A1 in the same transaction is fatal to the prosecution case, and accordingly acquitted the accused. The State has not preferred any appeal against the findings of the learned Judicial Magistrate. Under such circumstances, I do not find any reason to interfere with the well considered judgment of the Court below in C.C.No.289 of 1997 on the file of the learned Judicial Magistrate No.II, Mannargudi, which is neither illegal nor infirm to warrant any interference from this Court.

8. In fine, the revision is dismissed confirming the judgment in C.C.No.289 of 1997 on the file of the learned Judicial Magistrate No.II, Mannargudi.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Judicial Magistrate No.II, Mannargudi.

2.The Chief Judicial Magistrate, Tiruvarur District.

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3.The Inspector of Police,
Paravakottai Police Station, Mannargudi Taluk,
Tiruvarur District.

4.The Public Prosecutor, High Court, Madras.

+ one cc to Mr. P.K. Rajagopal,Advocate sr no. 33993
+ one cc to Mr. B, Pugulandhi, Advocate sr o. 33697

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